

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THOMAS H. KRAKAUER,)	
)	
Plaintiff,)	
)	
v.)	1:14-CV-333
)	
DISH NETWORK L.L.C.,)	
)	
Defendant.)	

ORDER

This matter comes before the Court on Dr. Krakauer's motion for approval of class notice plan, (Doc. 126), and revised notice plan. (Doc. 146). With slight modifications, the Court grants the motion.

Following certification of a class under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). On September 9, 2015, this Court certified the following two classes:

Class 1: ("IDNC Class")

All persons throughout the United States whose telephone numbers were listed on the federal Do Not Call registry for at least 30 days, but who received telemarketing calls from Satellite Systems Network, to promote the sale of Dish satellite television subscriptions from May 1, 2010 to August 1, 2011.

Class 2: ("NDNC Class")

All persons throughout the United States whose telephone numbers were listed on either the defendant's or Satellite Systems Network's company specific Do Not Call registries, but who received telemarketing calls by or at the direction of

Satellite Systems Network, to promote the sale of Dish satellite television subscriptions from May 1, 2010 to August 1, 2011.

(Doc. No. 111 (the “certification order”)).

Dr. Krakauer proposes a national notice program that intends to reach at least the seventy percent threshold for a reasonable notice plan. *See* Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide, Fed. Jud. Ctr. 6 (2010), [http://www.fjc.gov/public/pdf.nsf/lookup/NotCheck.pdf/\\$file/NotCheck.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/NotCheck.pdf/$file/NotCheck.pdf), at 3. Dr. Krakauer proposes the following notice plan:

- **Direct Postcard Notice:** Dr. Krakauer obtained an expert witness to narrow the call records obtained from a third party reflecting calls made by Satellite Systems Network to promote the sale of Dish satellite television subscriptions from May 1, 2010 to August 1, 2011. The plaintiff’s expert compared the lists to a historical National Do Not Call Registry to identify members of the NDNC class. The expert further compared the lists to Dish’s Internal Do Not Call list, and included individuals in the calling records that stated “DNC” or “Do Not Call” to identify individuals in the IDNC class. This process resulted in a list of 20,450 unique numbers for the NDNC class, (Doc. 111 at 11), and an additional list of 7,831 unique numbers for the IDNC class. (*Id.* at 11-12). Thus, the total list of call records includes the names and addresses of 28,281 class members. (*See id.*). Where the call records do not include the names and addresses of class members or those records are incomplete, the plaintiff’s expert supplemented the data through additional research using Lexis/Nexis, (*id.* at 12), and updated both lists pursuant to this court order through the National Change of Address Database. Plaintiff’s third party administrator, AB Data, will now send the post card notice through U.S. First Class Mail to all of the addresses obtained. This process is designed to reach all class members.¹
- **Case-Dedicated Website:** The notice administrator will establish a case-dedicated website at www.DishClassAction.com to provide relevant case documents, including the complaint and class certification

¹ To the extent that any of the notices are returned as undeliverable, despite having gone through the NCOA process described above, they will be re-mailed to any address available through postal service information.

order, and reliable and accurate information to the class members and the public regarding the classes. The website will allow class members to update their contact information either via email, electronic submission or mail. Individuals who believe they are class members but that did not receive a postcard notice will also be able to submit their name, address and telephone number either via email, electronic submission or mail.

- **Additional Online Notice:** To further supplement notice, the notice administrator will issue a press release via *PR Newswire*, post notice via *TopClassActions.com*, and issue a release via Facebook.

This proposed notice plan more than meets the requirements of Rule 23 that plaintiffs disseminate “the best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2). The Court will not require Dish to post a link to the class notice on its website, as that seems unlikely to improve the notice procedures and Dish objects to such a requirement.

The Court also finds that the proposed notices satisfy the requirements of Rule 23. The notices are written in plain language, they clearly convey to the class members their options and rights, and they provide concise instructions on what class members may expect.


The Court orders the following schedule for the dissemination of class notice and filing of a list of opt-outs with the Court:

<u>Event</u>	<u>Time</u>
Direct Postcard Notice Begins	February 17, 2016
Last Day for Opt-Outs	March 30, 2016
List of Opt-Outs to be filed with the Court	April 14, 2016

Class members who wish to opt-out may submit the proposed opt-out form by mail or email. The list of opt-outs to be filed with the Court will include the first initial, last name, city and state of residence for each person. The parties, however, will have the full contact information of the opt-outs.

It is hereby **ORDERED** that the motion for approval of class notice plan, (Doc. 126), is **GRANTED**.

This is the 9th day of February, 2016.



UNITED STATES DISTRICT JUDGE